

MS4 PERMIT CHALLENGES—HOW CAN WE PAY FOR COMPLIANCE?

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Thesis: Throughout most of urbanized California, drainage facilities are reaching the end of their design life. They were not designed with our current understanding of water pollution, sediment movement and scour, or sea level rise. They will have to be rebuilt over the next two decades, and it will take a coalition building effort to make sure we can afford them, and they respond to modern challenges.

HISTORY OF FUND RAISING FOR IMPROVED DRAINAGE FACILITIES

Many flood control districts have been set up in California with authority for developing facilities, either throughout the jurisdiction or in specific zones. For example, Sonoma County has 9 flood control zones that pre-date Proposition 13; some of those zones have extensive facilities, some have none. But passage of Proposition 13 in 1978 and Proposition 218 in 1996 have severely limited the ability of such districts to maintain or improve those facilities. Proposition 218 adds this specific constitutional provision which requires a 2/3 vote for most flood control and drainage facilities:

No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

The California State Association of Counties (CSAC), the League of California Cities (the League) and the Association of California Water Agencies (ACWA) have been working together to try to make it easier to fund drainage facilities. They developed a proposed Constitutional amendment titled "The California Water Conservation, Flood Control and Stormwater Management Act of 2016", but that measure did not poll well and has not gone forward at this time.

<http://www.co.contra-costa.ca.us/5816/Stormwater-Funding-Initiative>

Contra Costa County established a Clean Water Program in 1993, (ORDINANCE NO. 93-47), which established a system of Stormwater Utility Assessment (SUA) districts. Faced with their own internal estimates of as much as \$37 million/year to compliance with the MS4 permit of the time, the District proposed an increase in those fees. However that measure, based on property ownership voting rather than a popular vote, failed in 2012. Some cities, such as El Cerrito, have taken advantage of that structure to establish fees that will pay for MS4 compliance. <http://www.el-cerrito.org/DocumentCenter/View/5691>

Santa Clara Water District has been successful at taking a watershed approach to flood control and compliance, and has been supported by District Voters. They had established a funding mechanism that expired in 2000, and put a replacement measure, the Clean, Safe Creeks and Natural Flood Protection measure on the November 7, 2000 ballot where it secured more than 2/3 of the votes. renewal of that measure passed as Measure B in November, 2012, with more than 73% affirmative vote. A strong coalition of supporters helped in assuring passage. See [https://ballotpedia.org/Santa_Clara_Valley_Water_District_parcel_tax_Measure_B_\(November_2012\)](https://ballotpedia.org/Santa_Clara_Valley_Water_District_parcel_tax_Measure_B_(November_2012))

Text and ballot arguments for the 2000 measure can be found here:
http://www.smartvoter.org/2000/11/07/ca/scl/meas/B/meas_b_ballot_info.pdf

CURRENT EFFORTS

Both Berkeley and Oakland have infrastructure bonds on the November 2016 ballot that would provide some funding for flood control and green infrastructure. I am co-chair of Citizens for Parks and Infrastructure, the campaign committee for Berkeley's Measure T1, details of the measure can be found on our web site: <http://www.berkeleyfuture.com/>

Oakland's proposal, Measure KK, would provide \$600 million for a broad array of infrastructure. Details can be found here: <http://www2.oaklandnet.com/ibond2016/index.htm>

ANALYSIS AND RECOMMENDATIONS

1. Know your potential supporters and work with them in developing a measure. This is the basics of political organization. In the case of Measure T1, the campaign committee insisted that the City Council pass a resolution that established a clearer process for allocating bond funds, and specifically mentioned the use of funds for green infrastructure. This was essential for the endorsement of the Sierra Club and Save the Bay. For Measure KK, the mayor made personal commitments that some of the money would be used for green infrastructure. Without such a commitment, the Sierra Club would not have supported the measure. Santa Clara Water District had a broad base of support for both of their measures.
2. Establish a vision. Santa Clara Water District was particularly effective in establishing a vision for its stream system that provided for flood control, creek trails, and habitat restoration. Oakland was successful with Measure DD, which set up a nearly \$200 million bond fund for waterfront improvement and passed in 2002 with over 80% of the vote. That vision was established with a Master Plan that called for restoration of Lake Merritt, much of that vision has been implemented.
3. Follow the money. In the Bay Area, much funding for local streets comes through the Metropolitan Transportation Commission (MTC.) We think that these grants should help implement the established MS4 requirement for green infrastructure associated with road building and repair.
4. Find seed money to create a plan for green infrastructure and resiliency in the face of sea level rise. Like the Lake Merritt Plan in Oakland, strong visions capture the public's imagination and support.